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Before The
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Section 3 of the Cable	)	
Television Consumer Protection	)	
and Competition Act of 1992	)	MM Docket No. 92-262
	)	
Tier Buy-Through Prohibition	)	

COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

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Dated: January 13, 1993

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COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS

On behalf of the Coalition of Small System Operators, 1/ we hereby submit comments on the Notice of Proposed Rulemaking ("NPRM") in the captioned proceeding.

The Small System Operators represent an important and unique minority in the cable industry, operating cable television systems serving rural areas which might not otherwise have multi-channel service. Together, the Small System Operators operate a total of 2,011 systems serving 748,409 subscribers. The majority of these systems are very small, with fewer than 1,000 subscribers. In fact, 76 percent of the systems serve fewer than 500 subscribers. The average system serves 372 subscribers. Some of the systems serve areas with an average of fewer than five homes passed per mile. The average for these systems is less than 37 homes passed per mile, a significant statistic considering that some large system operators resist even doing system

1/ The Coalition of Small System Operators consists of Douglas Cable Communications, Inc., Midcontinent Media, Inc., Galaxy Cablevision, Vantage Cable, Classic Cable, USA Cablesystems, Inc., MW1 Cablesystems Inc., Buford Television, Inc. and Triax Communications Corp.

extensions into areas where density is less than 50 homes passed per mile, and the national average is about 77 homes passed per mile.

Most of the Small System Operators have at least some franchise agreements for systems that serve fewer than 50 subscribers. One typical Small System Operator reports that its smallest system serves 30 subscribers and its average system serves 85 subscribers. The equipment for these rural systems tends to have fewer high-tech features (e.g., addressability) than the equipment found in metropolitan areas, largely because revenue per subscriber simply will not support the purchase of high-end equipment. The Small System Operators report that revenue per subscriber is substantially lower in their smaller systems than in their systems serving 1,000 subscribers or more. Also, it is far more difficult to recoup major capital investments from 50 subscribers than it would be to recoup from 1,000 subscribers, not to mention 10,000 subscribers.

The overwhelming majority of the Small System Operators' systems rely on individually installed trapping devices or filters to restrict channel access. Far less than five percent of the Small System Operators' systems have addressable technology installed at the headend, and even the very few systems with that equipment have not achieved a high level of addressability in subscribers' homes. For example, one operator with 168 systems has just one system with addressable technology at the headend. That system -- one of the operator's largest -- has a total of 1921 subscribers, only 709 of which have addressable converter boxes in their homes. With this level of converter box penetration, this system is only 37 percent addressable.

The investment required to install addressable equipment at the headend is approximately $25,000, a huge sum when multiplied by the hundreds of little systems operated by the Small System Operators with headends that would have to be upgraded.

The enormity of this expense is apparent when it is prorated among the subscribers for these small systems. Even for the larger of the systems operated by the Small System Operators -- those with 1,000 subscribers -- the cost of addressable equipment at the headend would be approximately $25.00 per subscriber. Addressable converter boxes for each home would cost about $120.00, bringing the total cost of full addressability to $145.00 per subscriber for a system with 1,000 subscribers. As reported above, 76 percent of the systems have fewer than 500 subscribers. For a system with 500 subscribers, the cost of full addressability would rise to approximately $170.00 per subscriber. A system with 300 subscribers would have to pay $203.33 per subscriber for full addressability. A system with only 50 subscribers, which is not uncommon to find among the Small System Operators, would have to pay an incredible $500.00 per subscriber to offer fully addressable service. Of course, these tiny systems could not begin to recover such enormous costs from their subscribers, and would have no alternative but to discontinue service.

The Small System Operators support the Commission's interpretation of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"), which automatically extends a ten-year exemption of tier buy-through prohibitions to systems which do not have addressable equipment. Furthermore, systems should not be deemed to be "addressable" unless they have addressable equipment in place both at the headend and in every subscriber home. This automatic application of the exemption to operators without fully addressable systems will provide time for operators to purchase and deploy the equipment, which is not at the present time commonly found among small systems. Also, the automatic application of the exemption to systems that do not currently have addressable equipment will avoid the otherwise overwhelming administrative burden of processing thousands of individual waiver requests. Every single one of the systems -- a total of 2,011 -- owned by the Small System Operators would require a waiver of the tier buy-through rules if full addressability were required today.

The Small System Operators also urge the Commission to adopt rules providing for an automatic waiver of the tier buy-through prohibitions for any cable system of less than 1,000 subscribers that does not have addressable equipment in place at the end of the ten-year period. This approach would rely on market incentives to drive the acquisition of addressable technology, rather than artificially imposed incentives. If addressable technology generates sufficient revenue to justify its acquisition, small cable operators will not have to be regulated into buying it. If, on the other hand, addressable technology does not produce adequate revenues, smaller operators will not choose to buy it -- and they should not be made to buy it, because the result will necessarily be to require a rate increase, if not to drive the operator out of business. To the extent that addressable equipment does not pay for itself, operators will have no choice but to raise subscriber rates in order to recoup the equipment costs. This result would be paradoxical, as subscribers would end up paying for something that they, as consumers, would already have implicitly deemed not worthwhile by the failure of the equipment to attain commercial success in the open market.

In the NPRM the Commission states that a waiver at the end of the ten-year period would be justified if compliance with tier buy-through prohibitions would require a rate increase. NPRM at ¶ 6. The Small System Operators suggest that, if addressable equipment can be added without raising rates, it will be installed in their systems within the ten-year period. Therefore, if the addressable equipment has not been incorporated by the end of the ten-year period in a given smaller system, that system should receive an automatic, indefinite waiver of the requirement based on the economic infeasibility of addressable equipment for that system. As discussed above, the cost of providing even 12-channel service for these small systems is already much higher than for larger operators serving more densely populated areas, making the small systems' profit margin lower. The large increases in rates that would be required to recoup the cost of installing the expensive addressable technology simply would not be paid by small system subscribers, and cable service in sparsely populated areas would be seriously reduced.

Finally, notwithstanding the treatment given to larger systems, the Small System Operators request that systems with fewer than 1,000 subscribers specifically be excluded from having to seek a specific waiver of the tier buy-through rules if, at the end of the ten-year period, they have not installed addressable equipment. This request is consistent with the Act's requirement that the Commission reduce the administrative burdens and cost of compliance for systems with fewer than 1,000 subscribers. 47 U.S.C. § 543(i). It is likely that many small, rural systems simply will not have the wherewithal to accomplish the upgrade to addressable equipment, particularly if pay-per-view does not become profitable for small systems. These are precisely the systems that should not be made to suffer the administrative burden and cost of seeking a waiver of the rules at the end of the ten-year period. Therefore, automatic waivers should be given to this special class of operator.

In conclusion, the Commission should allow market forces to drive the implementation of addressable technology by granting to all systems of 1,000 subscribers or less without such equipment an automatic ten-year exemption of the tier buy-through restrictions. At the end of the ten-year period, the Commission should automatically waive the restrictions for any such systems which still do not have addressable equipment at their headends and in all subscriber homes. Small systems (that is, systems with fewer than 1,000 subscribers) should be excused from the administrative burden and costs of having to seek a waiver of the tier buy-through rules and should automatically receive waivers until such time as they fully install addressable technology.

Respectfully submitted,

COALITION OF SMALL SYSTEM OPERATORS

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